

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re REFCO INC. SECURITIES LITIGATION : X  
: Case No. 07-md-1902 (JSR)

This Document Relates To: : X

KENNETH M. KRYS, *et al.*, : X  
: Case No. 08-cv-7416 (JSR)

Plaintiffs, :  
: X

-against- :  
: X

ROBERT AARON, *et al.*, :  
Defendants. :  
: X

**DECLARATION OF LEE M. ANDELIN IN SUPPORT OF PLAINTIFFS' RESPONSE  
IN OPPOSITION TO DPM DEFENDANTS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

I, Lee M. Andelin declare as follows:

1. I am a member of the law firm Beus Gilbert PLLC, for plaintiffs Kenneth M. Krys, *et al.* ("Plaintiffs") in the above-captioned action. I am admitted to practice before this Court. I respectfully submit this declaration in support of Plaintiffs' Motion For Partial Summary Judgment Against The DPM Defendants.

2. Attached hereto as Exhibit 37 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Christopher Aliprandi dated 28-29 Feb 12.

3. Attached hereto as Exhibit 38 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Garbriel Bousbib dated 28 Nov 07, 22-23 Mar 12, and 11 Jun 12.

4. Attached hereto as Exhibit 39 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Guy Castranova dated 9 May 12.

5. Attached hereto as Exhibit 40 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Patrina Khoo Farquharson dated 11-12 Jul 12.

6. Attached hereto as Exhibit 41 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Andrew Feighery dated 28 Mar 12.

7. Attached hereto as Exhibit 42 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Vera Kraker dated 13 Feb 06 and 12 Aug 09.

8. Attached hereto as Exhibit 43 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Diego Lago dated 30 Mar 12.

9. Attached hereto as Exhibit 44 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Tia Lowe dated 2 Mar 12 and 26 Mar 12.

10. Attached hereto as Exhibit 45 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Santo Maggio dated 14-16 Dec 09 and 6 Jan 10.

11. Attached hereto as Exhibit 46 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Oscar Montes dated 8 May 12.

12. Attached hereto as Exhibit 47 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Ricardo Mosquera dated 7 Feb 12.

13. Attached hereto as Exhibit 48 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Chris Rose dated 10 Feb 06, 3 Mar 06, 31 May 12, 1 Jun 12, and 21 Jun 12.

14. Attached hereto as Exhibit 49 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Timothy Phillips dated 9 Mar 12.

15. Attached hereto as Exhibit 50 is a true and correct copy of the transcript(s) of the sworn deposition testimony of David Crichlow dated 30 May 12.

16. Attached hereto as Exhibit 51 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Justin Dew dated 24 Feb 12.

17. Attached hereto as Exhibit 52 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Tamischa Ambrister dated 28 Sep 12.

18. Attached hereto as Exhibit 53 is a true and correct copy of Deposition Exhibit 4887, material weakness letter from PricewaterhouseCoopers to the Boards of Directors of PlusFunds Group, Inc. (“PlusFunds”) and of PlusFunds (the “Funds”) dated 16 Aug 04.

19. Attached hereto as Exhibit 54 is a true and correct copy of Deposition Exhibit 4268, RCM sub-account opening documents, with FAX cover sheet and transmission receipt dated 24 Dec 02.

20. Attached hereto as Exhibit 55 is a true and correct copy of DPM039-1893-1912, Discretionary Investment Management Agreement between Eclipse Capital, PlusFunds Group, Inc., and SPhinX Managed Futures Fund, SPC, dated 16 Dec 02.

21. Attached hereto as Exhibit 56 is a true and correct copy of the SPhinX Managed Futures Fund SPC financial statements dated 31 Dec 02.

22. Attached hereto as Exhibit 57 is a true and correct copy of Deposition Exhibit 6107, Memorandum of Agreement between Refco Group Ltd., LLC, Standard & Poor’s, and PlusFunds Group, Inc., dated 28 Feb 03.

23. Attached hereto as Exhibit 58 is a true and correct copy of Deposition Exhibit 4014, the Standby Credit Facility Agreement between PlusFunds Group, Inc. and Refco Capital LLC dated 13 Apr 05.

24. Attached hereto as Exhibit 59 is a true and correct copy of Deposition Exhibit 6540, the Report of Peter Vinella dated 29 Jun 12.

25. Attached hereto as Exhibit 60 is a true and correct copy of the spreadsheet titled SPhinX Managed Futures Fund SPC Year-to-Date Change in NAV Analysis for the Year Ended December 31, 2002. (AL435227-44.)

26. Attached hereto as Exhibit 61 is a true and correct copy of a FAX from S. Diemer at Derivatives Portfolio Management, LLC to T. Urban re SPhinX Ltd Subscription Agreement for Non-US Investors dated 12 Jul 02. (PF-089-0000841-73.)

27. Attached hereto as Exhibit 62 is a true and correct copy of Deposition Exhibit 1220, a Written Resolution of the Authorized Person of Sphinx Ltd. Signed by Stuart Drake, Robert Aaron and Martin Grennell dated 24 Jun 03.

28. Attached hereto as Exhibit 63 is a true and correct copy of Deposition Exhibit 4940, an Email to Robert Aaron from Tia Urban re SPhinX Launch Meeting dated 20 Jun 02.

29. Attached hereto as Exhibit 64 is a true and correct copy of Deposition Exhibit 4950, an E-mail to Stuart Drake from Christopher Aliprandi re Director's signature on financial statements dated 25 Mar 03.

30. Attached hereto as Exhibit 65 is a true and correct copy of Deposition Exhibit 6315, an Email to Andrew Feighery from Susan Staisil re SPhinX Board Meeting October 1, dated 24 Sep 04.

31. Attached hereto as Exhibit 66 is a true and correct copy of the Declaration Statement of Andrew Feighery, Dec 12.

32. Attached hereto as Exhibit 67 is a true and correct copy of Deposition Exhibit 6104, the Investment Agreement between Sentinel Bank, PlusFunds and SPhinX dated 18 Oct 02.

33. Attached hereto as Exhibit 68 is a true and correct copy of a FAX to Robert Aaron from Susan Haery with attached copy of the Investment Agreement between Sentinel, PlusFunds, and SPhinX dated 21 Oct 02. (RA 0015004-17)

34. Attached hereto as Exhibit 69 is a true and correct copy of Deposition Exhibit 1649, a letter to Thomas Hackl from Christopher Sugrue dated 10 Dec 02.

35. Attached hereto as Exhibit 70 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Paul Aaronson dated 23 Feb 12.

36. Attached hereto as Exhibit 71 is a true and correct copy of a FAX containing documents related to Sentinel's redemption of its SPhinX investment dated 21 Apr 05. (DPM164-0711-13)

37. Attached hereto as Exhibit 72 is a true and correct copy of Deposition Exhibit 5597, the Report of Richard Breeden dated 29 June 2012.

38. Attached hereto as Exhibit 73 is a true and correct copy of Deposition Exhibit 6564, the Report of R. David Wallace dated 29 June 2012 (including corrections as of 20 Jul 12.)

39. Attached hereto as Exhibit 74 is a true and correct copy of the Witness Statement of Chris Rose, 10 Dec 12.

40. Attached hereto as Exhibit 75 is a true and correct copy of the Witness Statement of Chris Aliprandi, 30 Nov 12.

41. Attached hereto as Exhibit 76 is a true and correct copy of the Witness Statement of Patrick McMahon dated 30 Nov 12.

42. Attached hereto as Exhibit 77 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Kenneth Gerstein dated 6 Mar 12.

43. Attached hereto as Exhibit 78 is a true and correct copy of Deposition Exhibit 4484, an email string between Pat McMahon and Tony Chang dated 15-26 Aug 05.

44. Attached hereto as Exhibit 79 is a true and correct copy of the Witness Statement of Diego Winegardner dated 4 Dec 12.

45. Attached hereto as Exhibit 80 is a true and correct copy of the Witness Statement of Paul Aaronson dated 30 Nov 12.

46. Attached hereto as Exhibit 81 is a true and correct copy of the Witness Statement of Peter Ewing dated 30 Nov 12.

47. Attached hereto as Exhibit 82 is a true and correct copy of the Witness Statement of Adam Eilenberg dated 3 Dec 12.

48. Attached hereto as Exhibit 83 is a true and correct copy of Deposition Exhibit 4555, an email string between Adam Eilenberg and Randal Yanker dated 8-11 Apr 05.

49. Attached hereto as Exhibit 84 is a true and correct copy of Deposition Exhibit 4897, the Phase I Credit Agreement dated 29 Mar 05 between Suffolk LLC and Refco Capital LLC.

50. Attached hereto as Exhibit 85 is a true and correct copy of Deposition Exhibit 4961, an E-mail to Mark Kavanagh from Kevin Tagami re: Plusfunds - Memorandum on Credit Facilities, with attachment "PlusFunds – Memo Re Credit Facilities Relating to Refco," dated 1 Nov 05.

51. Attached hereto as Exhibit 86 is a true and correct copy of Deposition Exhibit 6345, an Email to Brian Owens from Chris Aliprandi re Comments to Credit Agreement dated 13 Apr 05.

52. Attached hereto as Exhibit 87 is a true and correct copy of Deposition Exhibit 4851, a chart titled "Monthly Unencumbered Cash by Strategy."

53. Attached hereto as Exhibit 88 is a true and correct copy of Deposition Exhibit 6205, an Email to Brian Owens from Christopher Aliprandi re Liquidity Issues dated 4 Feb 05.

54. Attached hereto as Exhibit 89 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Gregory Troccoli dated 23 Jul 12.

55. Attached hereto as Exhibit 90 is a true and correct copy of Deposition Exhibit 5511, Ken Krys' Report on Interest earned by SMFF on Excess Cash at RCM & Refco LLC dated 29 Jun 12.

56. Attached hereto as Exhibit 91 is a true and correct copy of Deposition Exhibit 5577, the Revised Report of Kenneth M. Lehn dated 14 Aug 12 (as corrected 17 Sep 12).

57. Attached hereto as Exhibit 92 is a true and correct copy of an email to Vera Kraker from Carlo Valdes re SPhinX receiving interest credit dated 13 Nov 03.

58. Attached hereto as Exhibit 93 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Michael Mikytuck dated 12 Jun 12.

59. Attached hereto as Exhibit 94 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Kenneth Lehn dated 19 Sep 12.

60. Attached hereto as Exhibit 95 is a true and correct copy of the Deposition Exhibit 5578, Report of Kenneth Lehn dated 14 Aug 12.

61. Attached hereto as Exhibit 96 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Keith Kemp dated 28 Jun 12.

62. Attached hereto as Exhibit 97 is a true and correct copy of the Affidavit of Kenneth M. Krys dated 22 Jan 13.

63. Attached hereto as Exhibit 98 is a true and correct copy of the Neiderhoffer Account Statement - Refco LLC dated 30 Sep 05. (PLF-BME-0134709-10.)

64. Attached hereto as Exhibit 99 is a true and correct copy of the Liberty Corner's RCM Account Statement for 30 Jun 04. (REFCO – 0009 – 030682-83.)

65. Attached hereto as Exhibit 100 is a true and correct copy of the RCM statement for Beckenham Trading dated 28 Mar 02. (REFCO-0005-118759.)

66. Attached hereto as Exhibit 101 is a true and correct copy of the Deposition Exhibit 4679, an Email to Thomas Hackl from Gabriel Bousbib dated 11 Nov 04.

67. Attached hereto as Exhibit 102 is a true and correct copy of the Deposition Exhibit 5510, Ken Krys' Report on cash balances and transfers in respect of the SPhinX Group of Companies dated 29 Jun 12.

68. Attached hereto as Exhibit 103 is a true and correct copy of Deposition Exhibit 4486, an Email to Lawrence Eckert from Tony Chang re Refco Account Opening Documents dated 13 Oct 05.

69. Attached hereto as Exhibit 104 is a true and correct copy of Deposition Exhibit 4734, an Email string to Tony Chang from Tia Urban (Lowe) dated 13 Oct 05.

70. Attached hereto as Exhibit 105 is a true and correct copy of Deposition Exhibit 4920, an Email to Brian Owens from Chris Sugrue re Refco dated 12 Oct 05.

71. Attached hereto as Exhibit 106 is a true and correct copy of Deposition Exhibit 4921, an Email to Chris Sugrue from Brian Owens re "FW: Privilidged [sic] Communication," dated 13 Oct 05.

72. Attached hereto as Exhibit 107 is a true and correct copy of Deposition Exhibit 6128, an Email to All PlusFunds Staff from Paul aronson re Refco Situation dated 13 Oct 05.

73. Attached hereto as Exhibit 108 is a true and correct copy of Deposition Exhibit 6265, an E-mail string between Tony Chang and Bruce Bolander (cc'ing others) re Certain Refco Documents Related to Bankruptcy Commodity Law Analysis dated 17 Oct 05.

74. Attached hereto as Exhibit 109 is a true and correct copy of an email to Paul Aaronson from Mark Kavanagh re Refco dated 13 Oct 05. (RA 0017322.)

75. Attached hereto as Exhibit 110 is a true and correct copy of the witness statement of David Crichlow dated 14 Dec 12.

76. Attached hereto as Exhibit 111 is a true and correct copy of the Complaint to Avoid and Recover Transfers Pursuant to 11 USC - §§ 547 and 550 dated 16 Dec 05.

77. Attached hereto as Exhibit 112 is a true and correct copy of Deposition Exhibit 5045, an E-mail to Daniel Mollin from Karen Dine re Meeting with Daniel, Karen, Richard Epling, and Eric relating to Weakness of case dated 6 Jun 06.

78. Attached hereto as Exhibit 113 is a true and correct copy of Judge Drain's Order Granting Summary Judgment dated 20 Jul 07.

79. Attached hereto as Exhibit 114 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Walter Price dated 18 Jan 12.

80. Attached hereto as Exhibit 115 is a true and correct copy of Deposition Exhibit 5031, an E-mail to David Crichlow from Erica Carrig attaching Revised Proof Chart dated 16 Mar 06.

81. Attached hereto as Exhibit 116 is a true and correct copy of Deposition Exhibit 5030, a memorandum Re: Constructive Trusts dated 30 Jan 06.

82. Attached hereto as Exhibit 117 is a true and correct copy of Deposition Exhibit 3233, "Exhibit 1, Updated September 19, 2011" ("Allowed Claim Chart").

83. Attached hereto as Exhibit 118 is a true and correct copy of Deposition Exhibit 4963, the Phase 2 Credit Agreement dated 29 March 2005 between Suflok-KAV LLC and Refco Capital LLC.

84. Attached hereto as Exhibit 119 is a true and correct copy of Deposition Exhibit 4633, the Investment Management Agreement between SPhinX Managed Futures Fund, SPC and PlusFunds dated Jul 02.

85. Attached hereto as Exhibit 120 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Robert Aaron dated 23 Feb 06, 27 Feb 08, 7 Aug 12, 8 Aug 12.

86. Attached hereto as Exhibit 121 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Peter Ewing dated 15 Mar 12.

87. Attached hereto as Exhibit 122 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Patrick McMahon dated 7 Jun 12.

88. Attached hereto as Exhibit 123 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Anthony Travers dated 3 Oct 12.

89. Attached hereto as Exhibit 124 is a true and correct copy of a SPhinX signature card as signed by several DPM officers and employees. (RA0001153-55).

90. Attached hereto as Exhibit 125 is a true and correct copy of a SPhinX signature card as signed by several DPM officers and employees dated 27 Sep 02. (RA0001616-17.)

91. Attached hereto as Exhibit 126 is a true and correct copy of an Email to Martin Grennell and Robert Aaron from Susan Haery re: Irish Stock Exchange Documents dated 1 Jul 02, with an attached Director's Confirmation and Authority letter as executed by Robert Aaron and dated 25 Jun 02. (RA0001127-35.)

92. Attached hereto as Exhibit 127 is a true and correct copy of a Director's Confirmation and Authority letter as executed by Robert Aaron dated Nov 03, as well as misc. documents relating to the Irish Stock Exchange. (RA0015741-71.)

93. Attached hereto as Exhibit 128 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Christine Kuna dated 28 Feb 08.

94. Attached hereto as Exhibit 129 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Guy Locke dated 22 Aug 12.

95. Attached hereto as Exhibit 130 is a true and correct copy of Deposition Exhibit 6053, Minutes of Telephonic Meeting of the Directors dated 19 Apr 06.

96. Attached hereto as Exhibit 131 is a true and correct copy of Deposition Exhibit 6055, Minutes of Telephonic Meeting of the Directors dated 25 Apr 06.

97. Attached hereto as Exhibit 132 is a true and correct copy of Deposition Exhibit 4879, Amended and Restated Service Agreement between DPM and SPhinX dated 28 Feb 06.

98. Attached hereto as Exhibit 133 is a true and correct copy of Deposition Exhibit 5496, Letter to DPM from David Misch re: final indication of interest dated 28 Oct 04.

99. Attached hereto as Exhibit 134 is a true and correct copy of Deposition Exhibit 5507, the Investment Management Agreement and Amendment No. 1 between SPhinX Ltd. and PlusFunds dated 12 Jul 02.

100. Attached hereto as Exhibit 135 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Stuart Drake dated 29 Feb 12.

101. Attached hereto as Exhibit 136 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Martin Grennell dated 15 May 12.

102. Attached hereto as Exhibit 137 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Brian Owens dated 18-19 Apr 12.

103. Attached hereto as Exhibit 138 is a true and correct copy of the transcript(s) of the sworn deposition testimony of Diego Winegardner dated 9 Feb 12.

104. Attached hereto as Exhibit 139 is a true and correct copy of Deposition Exhibit 6576, CFTC Interpretative Letter No. 86-2 dated 18 Feb 86.

105. Attached hereto as Exhibit 140 is a true and correct copy of NFA Interpretative Notice No 9509, 15 Feb 07.

106. Attached hereto as Exhibit 141 is a true and correct copy of Deposition Exhibit 5543, the Report of Timothy Ridley dated 29 June 2012.

107. Attached hereto as Exhibit 142 is a true and correct copy of AICPA AU § 319, *Consideration of Internal Control in a Financial Statement Audit*.

108. Attached hereto as Exhibit 143 is a true and correct copy of AICPA AU § 325, *Communication of Internal Control Related Matters Noted in an Audit*.

109. Attached hereto as Exhibit 144 is a true and correct copy of Deposition Exhibit 6100, the License Agreement between Standard & Poor's and PlusFunds Ltd. dated 20 Dec 01.

110. Attached hereto as Exhibit 145 is a true and correct copy of Deposition Exhibit 5612, the Discretionary Investment Management Agreement dated 29 Jul 02.

111. Attached hereto as Exhibit 146 is a true and correct copy of an excerpt of the sworn deposition testimony of Andrew Feighery dated 11 Dec 12.

112. Attached hereto as Exhibit 147 is a true and correct copy of the PlusFunds Risk Committee Meeting Minutes and Risk Report dated 25 Aug 04. (PF-034-000296-322.)

113. Attached hereto as Exhibit 148 is a true and correct copy of the Opinion of Anthony J. Leitner, dated 14 Sep 12.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 5 Mar 13.

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*s/ Lee M. Andelin*

Lee M. Andelin

**EXHIBIT 1 THROUGH EXHIBIT 148 HAVE BEEN  
PUBLICLY FILED ON ELECTRONIC DISK WITH  
THE CLERK OF THE COURT.**